UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 16-232 (DWF/LIB)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	GOVERNMENT'S POSITION ON SENTENCING
v.	)	
	)	
MORGAN JAMES BAUMANN,	)	
	)	
Defendant.	)	

COMES NOW the United States of America, by and through its undersigned attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, and Thomas M. Hollenhorst, Assistant United States Attorney, and submits the following position on sentencing concerning the defendant, Morgan James Baumann.

Procedural History

On August 16, 2016, Baumann was charged in an indictment with conspiracy to distribute 500 grams or more of methamphetamine (Count 1) in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846; possession of a machinegun (Count 2) in violation of 18 U.S.C. §§ 922(o)(1) and 924(a)(2); possession with intent to distribute methamphetamine (Count 3) in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); being a felon in possession of firearms (Count 4) in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and being a felon in possession of body armor (Count 5) in violation of 18 U.S.C. § 924(a)(1)(D) and 931(a). ECF 1. On November 21, 2016, pursuant to the terms of a written plea agreement, Baumann pled guilty to Counts 1, 2 and 4 of the indictment. ECF 25. In return, the government agreed to move to dismiss Counts 3 and 5 of the indictment at the time of sentencing. *Id.* at ¶ 1. Baumann is scheduled to appear for sentencing on April 10, 2017, in Duluth, Minnesota.

The Nature and Circumstances of the Offense

From the fall of 2015 and continuing through on or about April 8, 2016, Baumann conspired with numerous others to distribute 500 grams or more of methamphetamine. ECF 25 at ¶ 2.a.; Presentence Investigation Report ("PSR") at ¶¶ 8-13. During the period of the conspiracy, Baumann obtained multiple-pound quantities of methamphetamine from Todd Thomas Malley and others on a weekly basis which he then distributed in the Duluth area. ECF 25 at ¶ 2.a. During the period of the conspiracy, Baumann obtained and distributed over 15 kilograms of methamphetamine. ECF 25 at ¶ 2.a.; PSR at ¶ 24.

On January 17, 2015, in Duluth, Minnesota, the police stopped a vehicle occupied by Baumann. ECF 25 at ¶ 2.b.; PSR at ¶ 7. The police seized a STEN-type nine-millimeter caliber firearm, which qualifies as a machinegun under federal law. *Id.* Baumann's DNA was later found on the firearm. *Id.*

On April 7, 2016, in Duluth, Minnesota, the police executed a search warrant at a residence frequented by Baumann. ECF 25 at ¶ 2.c.; PSR at ¶¶ 11-12. The police seized approximately one ounce of methamphetamine, about 15 grams of which was found near several items of Baumann's personal property, including his passport. *Id.* The police also seized various items of drug paraphernalia, ammunition, and three firearms. *Id.*

On April 8, 2016, in Duluth, Minnesota, the police seized the firearms and the body armor listed in Counts 4 and 5 of the indictment, as well as parts for another STEN-type machinegun in Wisconsin. ECF 25 at ¶ 2.d.; PSR at ¶¶ 14-16. Baumann was storing these items at various locations in the Twin Ports area. *Id.* At the time, Baumann had previously been convicted of the crimes alleged in Count 4 of the indictment. ECF 25 at ¶ 2.d.; PSR at ¶ 6.

Guideline Range

The probation office has recommended that Baumann be deemed to have a total offense level of 37. PSR at ¶¶ 48, 102. With a criminal history category of V, this would produce a guideline range of 324 to 405. PSR at ¶¶ 64, 102; USSG Ch. 5, Pt. A (Sentencing Table). Contrary to the probation office's recommendation, and for the reasons discussed below, the parties object to a two-level increase in Baumann's offense level under USSG § 2D1.1(b)(12). As such, the parties believe that Baumann's total offense level is 35.[1] With a criminal history category of V, this would produce a guideline range of 262 to 327 months. USSG Ch. 5, Pt. A (Sentencing Table). The government believes that a sentence within the range of 262 to 327 months is sufficient, but not greater than necessary, to serve the goals of sentencing in this case, regardless of which guideline range the Court adopts at the time of sentencing.

The Criminal History of the Defendant

Baumann has a long criminal history which includes convictions for carrying a concealed weapon (1999); entry into a building construction site, carrying a concealed

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1. Consistent with the terms of the plea agreement, the parties agree that Baumann has a base offense level of 36 and should receive a two-level enhancement for possession of dangerous weapons and a three-level reduction for acceptance of responsibility. ECF 25 at ¶¶ 8.b. and 8.c.

weapon, and theft (1999); theft, carrying a concealed weapon, and possession of marijuana (2004); possession of an unregistered sawed-off shotgun (2004); selling marijuana (2013); second-degree aggravated robbery (2014); and resisting or obstructing a police officer (2015). PSR at ¶¶ 53-61. Baumann also has other arrests for theft (two times), carrying a concealed weapon, possession of THC, and possession of drug paraphernalia. PSR at ¶¶ 65-69. At least eight of his convictions and arrests involved firearms. *See* PSR at ¶¶ 53-56, 59- 61, 67. Moreover, Baumann committed the instant offense while on probation for his second-degree aggravated robbery conviction. PSR at ¶ 63. Baumann has a total of 11 criminal history points, placing him in criminal history category V. PSR at ¶ 64.[2]

The History and Characteristics of the Defendant

Baumann is 36 years old and was born in Chicago. PSR at ¶ 71. At the age of two, his mother moved to Wisconsin with him and his brother to get away from his abusive father. PSR at ¶ 73. The family struggled, and there was often no food on the table. *Id.* Baumann's mother often left the two boys with his maternal aunt and her seven children. PSR at ¶¶ 73-74. One day, when Baumann was about six years old, his mother did not come back to get them. *Id.* His aunt eventually placed them in foster care. PSR at ¶ 74. He and his brother were adopted when Baumann was 11 years old and raised by a married couple in Duluth. PSR at ¶ 75. Baumann was close to the couple's other family

2. Although it is a close call, the parties agree that Baumann is not a career offender, which would have placed him in criminal history category VI. See USSG § 4B1.1(b). With a total offense level of 35, this would have produced a guideline range of 292 to 365 months. USSG Ch. 5, Pt. A (Sentencing Table).

members. *Id.* He was homeschooled and received a high school equivalency diploma in 1999. PSR at ¶¶ 76, 89. He later received a two-year technical diploma in 2008, earning a 3.546 grade point average. PSR at ¶ 90. Baumann has never been married, but he has five children who range in ages from two to 14 years old. PSR at ¶ 78. He is currently engaged to be married. PSR at ¶ 80. Baumann appears to be in good health, save for arthritis in his ankles, bouts of bronchitis, a cut to his hand when he was a child, and a hernia surgery in 2011. PSR at ¶¶ 82-83. He has never been diagnosed with any mental health condition, although he attended counselling after reconnecting with his biological mother after more than 20 years. PSR at ¶ 84. Baumann's fiancé expressed concerns about Baumann's mood swings and believes that he may have bipolar disorder. PSR at ¶ 81. He has a long history of alcohol and drug abuse for which he is currently treated. PSR at ¶¶ 85-88. He has a spotty employment record, is over $60,000 in debt (which includes over $30,000 in back child support payments), and does not have the ability to pay a criminal fine. PSR at ¶¶ 93-100.

Drug Premises Enhancement

The parties agree, contrary to the recommendation of the probation office, that Baumann should not receive a two-level enhancement under USSG § 2D1.1(b)(12) for maintaining a premises for the purpose of manufacturing or distributing a controlled substance. The commentary to the Sentencing Guidelines provides:

> Among the facts the court should consider in determining whether the defendant "maintained" premises are (A) whether the defendant held a possessory interest in (e.g. owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises. Manufacturing or distributing a controlled substance need not be the sole

> purpose for which the premises was maintained, but must be one the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses for the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.

USSG § 2D1.1, comment. (n.17). The probation office has recommended application of the enhancement based primarily on the seizure of small quantities of methamphetamine and marijuana, and drug-trafficking paraphernalia, from a residence which Baumann frequented. PSR at ¶ 26. The government does not believe this is enough to apply the enhancement. Although the police saw Baumann coming and going from the residence, there is little evidence that Baumann "maintained" the premises for drug trafficking. Under these facts, the government does not believe that it can prove by a preponderance of the evidence that Baumann's "primary or principal" use for the residence was to manufacture or distribute drugs. Moreover, the parties stipulated in the plea agreement that the enhancement did not apply. *See* ECF 25 at ¶ 8.b.

The Needs of Sentencing

Considering all of the sentencing factors under 18 U.S.C. § 3553(a), the government believes that a sentence that includes a term of imprisonment within the range of 262 to 327 months is appropriate in this case. This case is aggravated by the serious nature of the charges, the significant quantities of methamphetamine distributed by Bauman, his prior criminal record (which includes at least eight firearm-related convictions and arrests, and a federal conviction for possession of a sawed-off shotgun), and Baumann's possession of over 20 firearms in connection with the instant offense (including a machinegun and parts for another one). Baumann appears to be undeterred in his zeal to possess firearms. The case is mitigated somewhat by Baumann's early childhood issues and chemical dependency problems. On balance, however, the government believes that a sentence that includes a term of imprisonment within the range of 262 to 327 months would serve the needs of sentencing to reflect the seriousness of the offenses, to promote respect for the law, to provide just punishment for the offenses, to afford adequate deterrence, to protect the public from further crimes of the defendant, and to avoid unwarranted sentencing disparities among defendants.

WHEREFORE, the government asks this Honorable Court to impose a sentence that includes a term of imprisonment within the range of 262 to 327 months.

Dated: February 21, 2017

Respectfully submitted,

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s/Thomas M. Hollenhorst
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